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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/685,840	10/14/2003	Robert Marc Clement	442337-1	5929

7590

07/01/2005

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EXAMINER

JOHNSON III, HENRY M

ART UNIT

PAPER NUMBER

3739

DATE MAILED: 07/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/685,840	Applicant(s) CLEMENT ET AL.	
	Examiner Henry M. Johnson, III	Art Unit 3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 March 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) ☒ Notice of References Cited (PTO-892) | 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) ☐ Notice of Informal Patent Application (PTO-152) |
| 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>050404</u> . | 6) ☐ Other: _____ |

DETAILED ACTION***Drawings***

The drawings are objected to because indicia are required to provide identification of major items without reference to the detailed specification. As an example, see included drawing in 35 U.S.C. 102 below. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 29-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 29 and 30 are rejected as being indefinite as illumination is not “manufactured”. Further, the intended use or result of illuminating tissue with specific parameters to produce singlet oxygen or change collagen is similarly not a patentable manufacturing process. Using both method and apparatus in the preamble, further clouds the exact intent of the claims.

Claim Rejections - 35 USC § 102

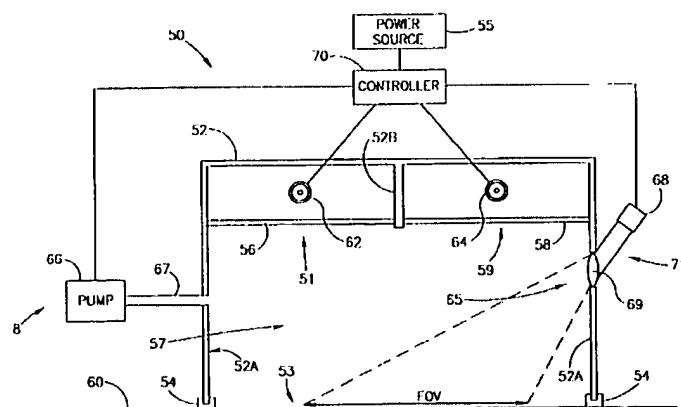
The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-30 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent 6,214,034 to Azar. Azar teaches a method and apparatus for selective photothermolysis of a target tissue within surrounding tissue, which is broadly interpreted as treatment of a skin condition (abstract). The preferred wavelength is between 550 and 610 nanometers (Col. 4, line



55). The light is filtered to pass on to the target only a narrow spectral band of light centered on a wavelength of 585 nanometers (col. 9, lines 50-53). Pulse durations from 1-3 ms are disclosed with fluences from 0.5 to 5

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J/cm² (Col. 12, lines 4-8). The device is placed over the skin adjacent the area to be treated and activated (Col. 12, lines 1-5) using the aforementioned parameters. The parameters are consistent with those disclosed by the applicant as affecting the treatment results. Acne Vulgaris is a skin condition.

Regarding claims 21 and 24, a controller (Fig. 7, # 70) stores the treatment program and controls the treatment parameters and is therefore capable of limiting the output fluence.

Claims 15-19 and 26-28 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,624,435 to Furumoto et al. Furumoto et al. teach a flashlamp-excited dye laser

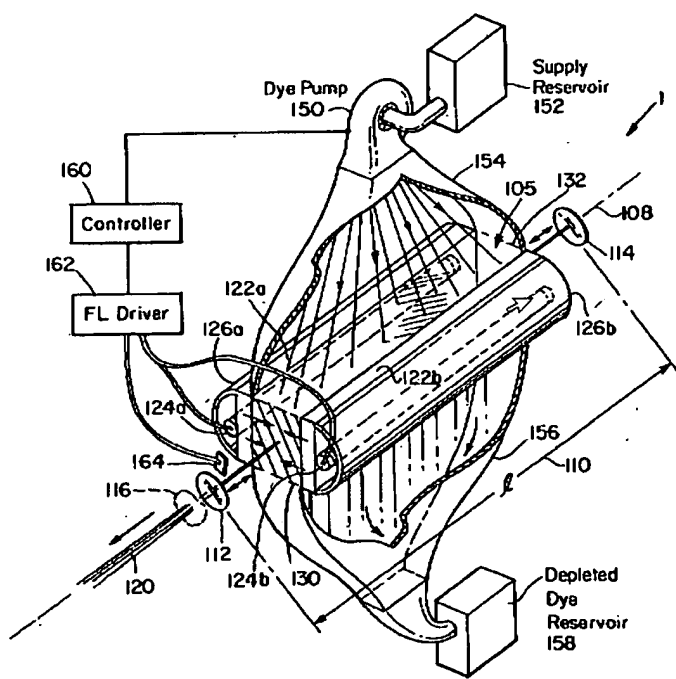


FIG. 2

(Fig. 2) generating light pulses for therapy has a circulator which circulates a gain media through a dye cell. A controller coordinates operation by triggering flashlamps to excite the laser gain media while the circulator is circulating the gain media. This operation enables the generation of

laser light pulses with a duration of at least one millisecond (abstract). The pulse duration may be from 1-10 ms (Col. 4, line 64) and the wavelength may be from 577 to 585 nanometers (Col. 1, line 57).

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Regarding claim 16, Acne Vulgaris is intended use with no impact on the device structure.

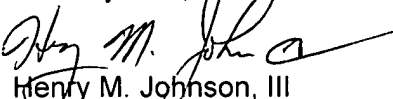
Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent 5,968,034 to Fullmer et al teaches a light source for tissue treatment with the pulse durations linked to the thermal relaxation time of the treated tissue.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Henry M. Johnson, III whose telephone number is (571) 272-4768. The examiner can normally be reached on Monday through Friday from 6:00 AM to 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Henry M. Johnson, III
Primary Examiner
Art Unit 3739